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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Dentistry, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 60-20
<b>Regulation title</b>	Regulations Governing the Practice of Dentistry and Dental Hygiene
<b>Action title</b>	Licensure requirements
<b>Document preparation date</b>	7/20/05

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The adoption of an “emergency” regulation by the Board of Dentistry is required to comply with amendments to Chapter 27 of Title 54.1 and the third enactment clause of HB2368 and SB1127 enacted by the 2005 General Assembly, which requires: “ ***That the Board of Dentistry shall promulgate regulations to implement provisions of this act within 280 days of its***

**enactment.**” Chapters 587 and 505 were enacted on March 22, 2005, the day HB2368 and SB1127 were signed by the Governor.

The amended regulations will: 1) Establish requirements for licensure by credentials for dentists consistent with new provisions in the Dental Practice Act; 2) Extend the voluntary practice license to include dentists and hygienists who held an unrestricted license in Virginia at the time it expired or became inactive and eliminate the supervision requirement for dentists out of practice less than 5 years; and 3) Clarify certain terms and rules for consistency.

**Legal basis**

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

**18VAC60-20-10 et seq. Regulations Governing the Practice of Dentistry and Dental Hygiene** are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

**§ 54.1-2400 -General powers and duties of health regulatory boards**  
*The general powers and duties of health regulatory boards shall be:*

...  
 6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

The legal authority to license and regulate dentists and dental hygienists may be found in the amended Chapter 27 of Title 54.1 of the Code of Virginia.

<http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+CHAP0587>

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The intent of the regulatory action is to comply with the requirements of Chapters 505 and 587 for regulations to implement licensure by credentials for dentists and to modify other sections of regulations in accordance with revisions to the Dental Practice Act. The proposed action will: 1) eliminate an unnecessary definition and clarify others; 2) state the qualifications for licensure

by credentials for dentists; 3) set out the criteria for licensure and practice of restricted volunteer dentists and dental hygienists; and 4) establish the requirements for delegation of duties of a dental assistant who is practicing under the direction of a hygienist while the hygienist is under the general supervision of a dentist. Since the criteria for licensure by credentials and for the restricted volunteer license are so specifically stated in the Code, the regulatory action does not need to expand or extend the requirements. It does offer clarity for provisions that were likely to generate questions and for which there was not clear guidance.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

Current section number	Current requirement	Proposed change and rationale
10	Sets out the definitions for words and terms used in the regulation	The definition of “approved schools” is eliminated because it is not used in the new section 71 or anywhere else in regulation. Definitions for “direction” and “general supervision” are amended to clarify that evaluation of a patient actually means that the patient has been examined.
20	Establishes the schedules and fees for renewal and reinstatement	The teacher’s license, restricted volunteer license or temporary permit to practice cannot be automatically renewed; certain conditions must be met – so the terminology is changed to clarify that renewal must be requested by June 30 <sup>th</sup> . The renewal date for the restricted volunteer license is changed to June 30 <sup>th</sup> for consistency with the law. Practicing with an expired licensure is prohibited, but the rule is amended to note the exception of a licensee who has an expired license but is practicing with a restricted volunteer license.
71	n/a	<b>18VAC60-20-71. Licensure by credentials for dentists.</b>  In accordance with § 54.1-2709 of the Code of Virginia, an applicant for licensure by credentials shall:  1. Be of good moral character and not have committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;  2. Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association.

		<p>3. Have passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations;</p> <p>4. Have successfully completed a clinical examination acceptable to the board and have not failed a clinical examination required by the board in the five years immediately preceding his application;</p> <p>5. Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and</p> <p>6. Have been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement.</p> <p><i>All requirements for licensure by credentials are established in § 54.1-2709, but the Board has specified that “one year of clinical practice” must include a minimum of 600 hours of practice in a calendar year as attested by the applicant.</i></p>
105	Sets out the requirements for holding or reactivating an inactive license	Practicing with an inactive licensure is prohibited, but the rule is amended to note the exception of a licensee who has an expired license but is practicing with a restricted volunteer license.
106	Sets out the requirements for the voluntary license for out-of-state practitioners who want to volunteer their services on certain dates and locations.	<p>Section is amended to <u>also</u> include in Subsection A the requirements for a. Restricted volunteer license , which is available to a dentist or a dental hygienist who held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive. The requirements are identical to those set out in §§ 54.1-2712.1 or 54.1-2726.1, but the board determined that it was necessary to restate in regulation to distinguish the 2 types of volunteer licenses.</p> <p>The only provision of regulation that is not already required by law is: That the restricted volunteer license must specify whether supervision is required (it is not if the restricted license holder has been actively practicing within the past 5 years), and if not, the date by which it will be required. If supervision is required, the supervising dentist is required review the quality of care at least every 30 days and to directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision must be noted in patient charts and maintained in accordance with current regulations.</p>
210	Sets out the requirements	An amendment will specify that direction includes an

	for direction and general supervision	examination of the patient before duties can be delegated to a dental hygienist.
230	Sets out the delegation to dental assistants by hygienists or dentists	Legislation amended § 54.1-2712. <u>Permissible practices</u> to specify that dental assistants can aid or assist dental hygienists under the general supervision of a dentist. Amendments establish that the standard for practice by a dental assistant under general supervision is to be under the <i>direction</i> of the dental hygienist who supervises the implementation of the dentist’s orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

There are no alternatives to the adoption of regulations; it is required by the third enactment clause of HB2368 and SB1127. In the development of regulatory language to implement the legislation, the Board adopted rules consistent with and, in some cases, identical to the statutory language. In the development of regulations, the Board sought to conform language to the amended law and, where necessary, provide further guidance for the regulated entities.

Regulations for licensure by credentials, issuance of a restricted voluntary license or practice by a dental assistant under the general supervision of a dentist and direction of a hygienist follow the statute and add clarity to the requirements. For example, the law requires an applicant for licensure by credentials to have been in continuous clinical practice for five out of the six years immediately preceding application. The regulation will further define the amount of practice that would constitute a year of practice as a minimum of 600 hours in a calendar year.

In another example, the requirements for a restricted volunteer license were set out in the legislation, including a requirement for a review of the quality of care by an active, licensed dentist at least every 30 days. To specify how that review should occur, the regulations provide that the supervising dentist must review the quality of care every 30 days (which could be accomplished in a variety of ways, including a random check of patient charts), but must directly observe patient care and review all patient charts at least quarterly.

**Family impact**

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

There is no impact of the emergency regulatory action on the institution of the family and family stability.